

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 30TH DAY OF JUNE, 2021



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Allison Chris Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSR 10562-20

AGENCY DKT. NO. N/A
2021-479

**IN THE MATTER OF SHEREECE HOLDER ,
SALEM COUNTY CORRECTIONAL FACILITY.**

Christopher A. Gray, Esq., for appellant, Shereece Holder (Law Offices of Sciarra & Catrambone, LLC, attorneys)

Joseph M. DiNicola, Jr., Esq., for respondent, Salem County Correctional Facility (DiNicola & DiNicola, LLC, attorneys)

Record Closed: March 31, 2021

Decided: May 4, 2021

BEFORE TAMA B. HUGHES, ALJ:

STATEMENT OF THE CASE

Shereece Holder, (“Holder” or “appellant”), a Corrections Officer with the Salem County Sheriff’s Office – Corrections Division (“Division” or “respondent”), appeals the Division’s Final Notice of Disciplinary Action (FNDA) and decision to terminate her employment.

PROCEDURAL HISTORY

On November 2, 2020, appellant filed an appeal of the Division's FNDA with the Civil Service Commission (CSC) and was perfected on that date. The matter was transmitted to the Office of Administrative Law (OAL) for a hearing as a contested case on November 6, 2020. An initial call was set up on December 10, 2020, at which time hearing dates were set for January 6, 2021, January 7, 2021, and January 11, 2021. Due to a scheduling conflict, the hearing dates were adjourned, and a status call was set up for January 4, 2021, to discuss new dates. During this call, respondent's counsel disclosed that two main witnesses, C.H. and R.B., were unavailable to testify, however, he would be seeking to introduce their statements as part of the Division's case in chief. At the time of the call, a new hearing date of February 10, 2021 was set.

On January 5, 2021, counsel for the appellant filed a Motion in Limine seeking to preclude the introduction of statements of C.H. and R.B. and stricken all references to their statements from the respondent's internal investigative report. Due to the fact that no opposition had been received by the respondent, the Tribunal reached out to the parties a couple of times to inquire if opposition would be forthcoming. Respondent's counsel failed to respond to any of these inquiries. As a result, oral argument on appellant's motion was set to occur immediately prior to the start of the hearing on February 10, 2021.

On February 10, 2021, prior to the start of the hearing, counsel for the respondent informed the Tribunal they had been able to procure the testimony of C.H. and R.B. and had notified appellant's counsel the prior afternoon.¹ Due to the inability to reach the

¹ Due to the late notice by Mr. DiNicola to appellant's counsel, Mr. Gray, that C.H. and R.B. would be testifying, Mr. Gray was provided the opportunity to adjourn the hearing date to allow him the opportunity to further prepare. This offer was respectfully declined, and the hearing proceeded accordingly. In his closing brief, Mr. Gray requested that every adverse inference and sanction be levied against the Division for not only the Division's lack of candor as it related to the procurement of R.B. and C.H.'s testimony, but also for the alleged witness tampering of C.H. by Lieutenant James Templeton (Templeton). While I find Mr. DeNicola's lack of response to both the Motion in Limine and the Tribunal's repeated inquiries questioning whether opposition would be filed, to be both disrespectful and a disservice to his client, I find his explanation credible that while contact had been made with both witnesses a couple of weeks prior, he was not certain that he could procure their presence until the eve of trial. It is unclear whether his lack of transparency on this issue, given the pending motion, was a trial strategy, lack of experience or otherwise, regardless, it resulted in late notice to Mr. Gray and no notice to the Tribunal until the hearing date. I do

testimony of all of the witnesses on the hearing date, a second hearing date was added on February 17, 2021. The parties were provided the opportunity to submit summation briefs that were received on March 31, 2021, at which time, the record closed.

FACTUAL DISCUSSION

The following facts are not in dispute in this matter and as such I **FIND** them as **FACT**:

On October 14, 2020, a Preliminary Notice of Disciplinary Action (PNDA) was filed against the appellant. (P-1, R-1) The Charges were violation of N.J.A.C. 4A:2-2.3 (General Causes) specifically:

1. Incompetency, inefficiency or failure to perform duties;
2. Insubordination;
3. Inability to perform duties;
6. Conduct unbecoming a public employee;
7. Neglect of duty;
12. Other sufficient cause (Violation of SCCF Rules and Regulations – 3:1.7 (neglect of duty); 3:1.29 (withholding information); 3:5.7 (truthfulness); 3:8.4 (truthfulness); 3:1.1 (Standards of Conduct); 3:1.5 (general responsibilities); 3:1.11 (obedience to laws and regulations); 3:2..20 (Use of Force); 3:1.33 (Civil rights); 3:2.1 (Prohibited Activity on Duty).

The Incident's giving rise to the charges in the PNDA and the dates on which it/they occurred stated: "On September 25, 2020, Officer Holder utilized force upon an inmate

not find however that the Division's dilatory actions prejudiced the appellant. No decision had been made on the application. Therefore, counsel had to be prepared to proceed as if the report and witness statements were coming in. Additionally, counsel was provided the opportunity to adjourn the hearing date to allow for additional time to prepare appellant's case. This offer was respectfully declined.

With regard to Templeton's unilateral decision to provide C.H. with a copy of her statement and show her the CCTV coverage, while troubling, I put it down to his lack of experience and poor judgment. Templeton readily admitted upon questioning, that appellants' matter was the first time he has ever had to testify at a hearing. Appellant was provided wide latitude on cross examination, to question all witnesses on this issue and impeach their credibility.

For all of the foregoing reasons, appellants request that all adverse inferences and sanctions be levied against the county is **DENIED**.

with no lawful justification to do so. On September 26, 2020, Officer Holder utilized force upon a different inmate with no lawful justification to do so. Officer Holder neglected to report either incident thereby covering up her wrongdoing.

The disciplinary action sought under the PNDA was removal. Appellant waived a hearing and on October 16, 2020, a Final Notice of Disciplinary Action (FNDA) was issued. (P-1, R-14) The "Sustained Charges" were violation of N.J.A.C. 4A:2-2.3 (General Causes) specifically:

1. Incompetency, inefficiency or failure to perform duties;
2. Insubordination;
3. Inability to perform duties;
6. Conduct unbecoming a public employee;
7. Neglect of duty;
12. Other sufficient cause (Violation of SCCF Rules and Regulations – 3:1.7 (Neglect of Duty); 3:1.29 (Withholding Information); 3:5.7 (Truthfulness); 3:8.4 (Truthfulness); 3:1.1 (Standards of Conduct); 3:1.5 (General Responsibilities); 3:1.11 (Obedience to Laws and Regulations); 3:2.20 (Use of Force); 3:1.33 (Civil Rights); 3:2.1 (Prohibited Activity on Duty). (P-6, R-12.)

The incident's giving rise to the sustained charges were identical to that identified in the PNDA. The disciplinary action taken was removal, effective October 16, 2020.

TESTIMONY

R.B. (R.B.), testified that in September 2020, she was incarcerated at the Salem County Correctional Facility (SCCF). She is familiar with Holder because she was a corrections officer at the facility. She recalled in incident when Holder became "nasty" with her because she (Holder) believed that she wasn't putting her tray away fast enough. As she was walking back to her cell, she told Holder that she didn't have to talk to her that way, however, Holder told her that if she didn't get back into her cell, she was going to "beat me the fuck up". According to R.B., she ignored Holder. At one point, as she was entering her cell, Holder said that she had slammed the door, or something to that

effect, at which point Holder came into her cell and shoved her. When she was shoved, she hit her head on the side of the doorjamb and turned backwards. She continued to walk backwards into the cell when Holder shoved her a second time causing her to land on her bed – all the while continuing to threaten to beat her up. R.B. stated that she was having difficulty recalling exactly everything that was said and what occurred because she has a short-term memory loss issue.

R.B. went on to state that when she hit her head on the doorjamb, it caused a red mark and some swelling. She went on to state that while she has been incarcerated in the past, she has never had a run-in with a corrections officer such as she had with Holder.

After she landed on the bed, the phone outside of her cell started ringing. Holder walked out and slammed the door, however, told her that she would be back to “beat my ass”. This shocked and troubled her because she believed that Holder was going to come back and beat her up and she did not understand why - particularly by someone in Holder’s position.

While she did not do so immediately, she did eventually report the incident which scared her because she did not know what type of retaliation there would be. She could not recall the name of the correction officer whom she reported the incident to. After she reported the incident, the facility acted quickly and took her claim seriously. She was taken to the medical unit to be checked out. According to R.B., she has high anxiety and started to panic when she was being check out, so she was given a breathing treatment. She has also been diagnosed with spinal cord cancer and is scheduled to have surgery. Additionally, she has stenosis an suffers from numbness in both legs and could possibly become paralyzed from the waist down. When Holder pushed her, given her medical condition, she was concerned that she could be further injured.

After the incident, Holder would not let her out of her cell for recreation time. In her (R.B.’s) mind, this was inhumane given the fact that they were only allowed out two hours a day. Holder would not tell her why she was treating her that way. At no time did

she did not think to apologize to Holder because she had done nothing wrong to apologize for.

On cross-examination, R.B. was questioned when she was contacted to testify at the hearing. In response she stated that two weeks prior to the hearing. She was aware however, that the Division had tried several times prior to that to reach her.

She was incarcerated at the facility after being picked up on an outstanding warrant. At the time of incarceration, she was detoxing from alcohol and fentanyl. She denied being argumentative with Holder. She also denied telling the medical staff when she was checked out that she had been argumentative with Holder. She also denied telling them that she was confused when the "lock-in" mandate was issued. She did admit to telling the medical staff that she had not been feeling well, was detoxing and that she was walking too slowly to her cell which is why Holder got upset with her.

R.B. was also questioned about her testimony that she was putting a tray away and the fact that at the time of the incident – two-thirty in the afternoon, there were no lunch trays out. In response she stated that she did not know if it occurred at breakfast or lunch but that the incident occurred earlier in the day. She denied using a phone at the time the alleged incident occurred.

R.B. also denied telling Holder that there was a camera in her cell and that it was going to record everything she did and to do what she was going to do. According to R.B. what she did say to Holder was "I wouldn't do that because there's a camera". She did not say anything else to her because she (Holder) was going to do what she wanted to anyway. On this last statement, R.B.'s testimony later evolved to the effect that she "may" have told Holder not to "threaten me" and she "may" have asked her what she had done wrong. She also probably told Holder that she was a mean person.

When questioned why she thinks Holder treated her that way, R.B. stated that it was because she (R.B.) was white. R.B. went on to comment that she is not a racist person because her "husband's black and all three of my grandchildren are mixed".

In questioning R.B. about her testimony that Holder shoved her twice, R.B. stated that the first shove was when Holder perceived her to be moving too slow. She hadn't quite made it to the cell door when Holder shoved her which was when she hit the side of her head, by her ear. This caused her to turn around which was when she was shoved a second time and landed on the bed.

R.B. denied not following Holder's directions to get into her cell. She was in fact walking towards the cell, however, she was detoxing at the time and not feeling well – she also was suffering from spinal cord cancer and leg numbness. R.B. was again asked about her statement to the medical staff on September 27, 2020 on how she hit her head. Specifically, her statement that she hit her head after she was pushed into the cell, not as she testified to, on the doorjamb going into cell. In response R.B. stated that she hit her head on the doorjamb located on the door frame going into the cell after she was pushed by Holder. Holder then shoved her a second time. She also insisted that she told the medical staff that she was pushed two times, not once.

R.B. was also asked about her cell change after the incident and whether she spoke to her cell mate, C.H. about the incident. R.B. stated that she believes she may have spoken to C.H. about what had occurred but not in depth. C.H. started to tell her that she had gone through a similar situation but she (R.B.) cut her off because she didn't want to get involved or in any trouble.

She did not report Holder to Internal Affairs (IA) and believed that it must been reported by the corrections officer whom she spoke to after the incident. It was her intent to just sweep the incident under the rug but the next thing she knew, she was being questioned by IA.

When asked if she told the investigator the truth when she was interviewed, she stated that she had to the best of her ability. However, she was detoxing at the time off of alcohol, so things were discombobulated. She also suffers from short term memory loss as a result of a prior overdoes. She acknowledged that at the time of the interview, she told the interviewer that her mind was "a little foggy".

R.B. was also asked about her IA statement that Holder did not feed her for hours. R.B. initially denied making that statement, however, when her interview statement was read back to her, she recalled saying it - adding that another corrections officer went and got her some fruit.

According to R.B., IA did not show her the surveillance footage from her cell at the time she was interviewed. Nor did they provide her a copy of her statement before she testified or go over her testimony before the hearing date.

C.H. (C.H.), testified that in September 2020, she was incarcerated in the SCCF. She is familiar with Holder, a corrections officer at the facility and was involved in an incident in September 2020, involving Holder. On the date in question, she was in cell B6 and her cell door would not properly lock and had to be pushed shut to lock. When the corrections staff came around to do checks, they would come in and slam the cell door to shut it. This would repeatedly awaken her which she grew tired of.

At one point, she asked another corrections officer if her cell could be change and was informed that she would have to talk to the duty officer – Holder. When Holder came back from break, she asked about having her cell changed and Holder gave her "attitude". C.H. went on to state that she and Holder "got into it" – an argument, and she believed that Holder shut the cell door on her. When Holder did this, she (C.H.) kicked it back open because she was angry and started screaming. It was C.H.'s belief that the door did not hit Holder when she kicked it open. Other than kicking the door once or twice, she did not make any other physical movements towards Holder. She can't remember her exact words, but she recalls cursing at Holder and calling her a bitch. When this occurred, Holder came back into the cell and put her hands around her neck and shoved her, causing her to fall back onto the bed. Holder did not release her neck until she fell onto the bed. According to C.H., she has a pacemaker and when Holder put her hands around her neck, choked and pushed her, anything could have happened.

She was in shock when Holder put her hands around her neck and was scared. Holder kept saying she was going to "F" her up and that she didn't give an "F" about her pacemaker. She (Holder) must have said the "F" word three or four times. After that

occurred, Holder walked out and within minutes came back and told her to pack up her belongings and that she (Holder) was tired of all of the disrespect she was being shown. While she asked nicely a couple of times where they were going, Holder refused to tell her. According to C.H., the cell that Holder put her in was disgusting – it had mold and paint drippings all over it – she assumed it was a “punishment room”. When the next officer came on shift, Officer Hoglen (Hoglen), she told Hoglen what had occurred. Hoglen in turn reported the incident to her supervisors. She did not discuss the incident with anyone, including any other inmates, until the following day when she was interviewed by IA. C.H. went on to add that while she had not discussed the incident with anyone, the other inmates could clearly hear what occurred and could certainly hear the commotion given how loud they were arguing.

After the incident was reported, she was evaluated by the Medical Unit. At the time, she had marks on her neck from where Holder had grabbed her, and a mark on her leg – similar to a rug burn from where Holder’s boot had hit her as she was being pushed.

On cross-examination, C.H. was asked when the county contacted her to testify. In response she stated that she was contacted a couple of weeks prior.² She was picked up by Templeton and Officer Kent (Kent), however, at no time on the ride down did they talk about what had happened. However, they did provide her the video of what had occurred in her cell which she hadn’t previously seen. They also provided her a copy of her IA statement to go over.

In going through her statement, C.H. was asked about her disclosure that Holder had choked her for a minute with two hands. In response she stated that it was with one hand around her neck and it was more like thirty seconds, but it felt like a minute. Upon further questioning, the thirty seconds became forty to forty-five seconds. When challenged that her testimony was different than her statement and whether her testimony was due to her viewing the video prior to her testifying, she stated that her statement must have a typo and she knows what she said during the interview.

² A discussion was had on the record over the fact that both R.B. and C.H. had been contacted by the county two weeks prior to the hearing but that counsel for the appellant was told on the eve of trial that they would be testifying. See footnote 1

When confronted with the fact that the video does not show her being choked for thirty or forty-five seconds, she stated that it felt like it. When questioned about being on opiate withdrawal protocol at the time of the incident, C.H. denied that she was going through withdrawal and that she was on withdrawal protocol. This was despite the fact that the facility records indicated otherwise.

C.H. was also asked about her disclosure to Hoglen - specifically that Holder had choked her with two hands. In response C.H. stated that that was incorrect and she did not know why Hoglen's report reflected that.³ Upon further questioning, this statement was revised with her saying that it was difficult to tell when the incident was occurring whether Holder had one or two hands around her neck – it happened so quickly. The same with Templeton's report which stated that C.H. had reported that Holder had used two hands. When questioned on this, C.H. again reiterated that when someone puts their hands around your neck, as in her case, the incident happened so quickly that it was difficult to say whether there were one or two hands around her neck. All she knows is that Holder came at her and pushed her onto the bed.

She was also questioned about the medical report which noted that there were no marks around her neck. According to C.H., she never said she had "marks" around her neck, she said that it was red around her neck.⁴ C.H. demonstrated how Holder had grabbed her neck - using her right hand and placing it under her chin on her throat.

In questioning C.H. whether she complained to Templeton about the cell she had been moved to, she acknowledged that she had. When asked if she was aware of what had happened to R.B. prior to her cell being moved, she stated that everyone on the unit could hear what had occurred given the acoustics on the unit. In R.B.'s case, she could hear yelling and an argument, and she could hear R.B. cursing. She denied discussing anything with R.B. when they were placed in the same cell with one another.

³ Notably, on direct, C.H. repeatedly claimed that Holder had choked her with two hands.

⁴ This statement was contrary to her earlier testimony on direct wherein she stated that she had a small red "mark" around her neck.

James Templeton, Jr., (Templeton), a Lieutenant with the SCCF testified that he has worked at the facility for over twenty-two years and is currently an IA investigator and supervisor. He has been in his current position for the past three years and went on to describe how an IA investigation is opened with the filing of a "IA14" and conducted. If there is a preponderance of the evidence, then the charges are sustained. If not, then the charges are deemed unfounded, exonerated, or not sustained.

In Holder's case, an IA14 was filed against her - the allegations being that she had choked an inmate. When the complaint came in, he was at home, so he proceeded into work. Upon arrival, he interviewed C.H. who stated that she had been choked, assaulted and kicked by Holder in her cell. Holder also threatened her with bodily harm and threatened to call a code. After Holder choked her and pushed her, she told Holder that she had a pacemaker. According to C.H., in response, Holder told her that she didn't care. The origin of the incident stemmed over C.H.'s door which would not properly close. According to Templeton, he reviewed the CCTV coverage of C.H.'s cell prior to meeting with her. The footage did not show a long choke hold, but it definitely showed Holder striking C.H. or grabbing her in the neck area. During C.H.'s interview, she mentioned that another inmate (R.B.) had had a problem with Holder a day or so prior.

He interviewed R.B. immediately after he spoke with C.H. According to R.B., Holder shoved her twice and then locked her in the cell. When Holder shoved her the first time, she hit her head on the doorjamb. When she was examined by the medical unit, they noted a knot on the side of her head. Due to the fact that he had just learned about the incident involving Holder, he did not have the opportunity to review the CCTV coverage prior to meeting with R.B. He did so after he interviewed her, and also re-reviewed the coverage of C.H. incident.

In review of C.H.'s films, he saw Holder and C.H. appearing to be argue - C.H. animatedly gesturing with her hands. He also observed C.H. kicking the cell door a couple of times. When she kicked the door the first time, her kick was so forceful that the door bounced off of the wall and closed back up again. It did not hit Holder. When C.H. kicked the door the second time, it was with significantly force and it was unclear whether the door hit Holder.

During the course of entire the incident, Holder entered C.H.'s cell three different times. When she went in on the third time, after C.H. had kicked the door the second time, she (Holder) struck C.H. around the neck with an open hand. It appeared as though Holder intended to choke C.H. After Holder grabbed and shoved C.H., she (C.H.) fell back onto her bed. Holder then came completely into the cell and stood over C.H. - her posture appearing aggressive. As this was happening, CCTV coverage shows C.H. pointing to her chest where her pacemaker was located.

In review of the CCTV coverage of R.B.'s cell, he saw R.B. walking into her cell with her back to Holder. Holder came up behind her and shoved her forcefully in the back and then closing the door. He did not see R.B.'s head striking the doorjamb.

Also interviewed was Hoglen - the officer whom C.H. had reported the incident to. Hoglen informed him that upon hearing about the alleged incident from C.H., she relayed the information to her superiors who in turn generated the IA14.

Holder was also interviewed as part of the investigation and provided a taped statement. From the start she claimed that both inmates had conspired against her to make up the story. He had already determined that that was not the case after his review of the CCTV footage. During her interview, Holder stated that she had not reported either incident or call a code because she believed that both incidents had been resolved.

Holder went on to tell him that she had previously worked at Gloucester County Corrections for six years and that they had a different set of rules and training as it related to use of force. Templeton noted that Holder had been with SCCF longer than she had been with the GCC. He believed that Holder was trying to justify her actions insinuating that such conduct was acceptable in Gloucester.

Templeton went on to state that when an officer has physical contact with an inmate, the officer is required to report it. If a situation has occurred where an officer has lost control of a situation, a "code" should be called. There were different types of "codes". One was a "1078" - an "all-call" where everyone comes running. There was

also a medical code. On a 1078 code, a response team comes in. The response team are individuals who have the requisite training to initiate the use of force and restrain inmates. While there may be occasions where a housing officer is required to protect themselves, if that occurs, they are required to report it, fill out a use of force form, let their supervisor know what had occurred, and have medical examine the inmate.

He is familiar with and reviewed SCCF rules and procedures as part of his investigation in this matter, and based upon his review of the same, it was his belief that Holder had violated several sections of the policy.⁵ In describing the basis for some of the charges he stated the following:

Violation of R.3:1.7 (Neglect of Duty). The basis for this charge was due to Holder's use of force on two separate inmates in two separate instances. She failed to report both incidents as required, did not notify her supervisor, nor did she contact the medical unit to have the inmates examined.

Violation of R.3:5.7 (Truthfulness) and R. 3:8.4 (Truthfulness). The basis for this charge was due to Holder's use of force and failure to report. By not reporting the instances, she was in violation of "truthfulness" by omission – not reporting the instances in an effort to cover them up.

Violation of R.3:1.5 (General Responsibilities). The basis for this charge was Holder's failure to report the incident(s), failure to notify medical and failure to document the incident(s)

Violation of R.3:1.1(1) (Obedience to Laws and Regulations). The basis for this charge was the same as the Violation of Responsibilities – failure to report the incident, notify medical and failure to document.

⁵ Templeton testified that based upon his investigation, he determined that Holder had violated the following rules and regulations: R. 3:1.7 (Neglect of Duty); R. 3:1.29 (Withholding Information); R3.5.7 (Truthfulness); R3:8.4 (Truthfulness); R. 3:1.1 (Standards of Conduct); R. 3:1.5 (General Responsibilities); R.3:1.1(1) (Obedience to Laws and Regulations); R. 3:2.20 (Use of Force); R. 3:1.33 (Civil Rights); R. 3:2.1 (Prohibited Activity on Duty).

Violation of R.3:20 (Use of Force). The basis for this charge was for multiple violations of the Use of Force Policy. (P-22.) Holder failed to report the incident(s), failed to provide medical care as required after force has been employed. Additionally, the level of force that was used, was not in defense of herself or authorized by her supervisor.

Violation of R. 3:1.33 (Civil Rights). The basis for this charge was due to the fact that both inmates were substance abuse inmates. They were on protocol/observation status for substance abuse as well as other medical conditions and had to be provided an additional level of care which Holder failed to do.

Violation of R. 3:2.1 (Prohibited Activity on Duty). The basis for this charge was the prohibition against use of physical, verbal or mental abuse of an inmate. In Holder's case, it was the physical abuse against R.B. and C.H.

On cross-examination, Templeton was asked why he showed C.H. the CCTV coverage on his iPad of the incident in her cell when he picked her up earlier in the day. In response he stated that he wanted to refresh her memory of the incident and had told her that her version of events did not line up with the statement that she had provided him.

When asked if his report noted the discrepancy between C.H.'s statement and the CCTV coverage, he stated that his report found that Holder had struck C.H. He acknowledged that his report did not specifically point out C.H.'s discrepancy in reporting - specifically that Holder had choked her for a minute with two hands and the CCTV coverage which reflected otherwise. He also acknowledged that his report did not point out the discrepancy in reporting as it related to marks on C.H. neck - or lack thereof. Nor did he take pictures to memorialize the marks - or lack thereof, on her neck. He was also aware that Hoglen's report stated that C.H. told her that Holder had choked her with two hands, not one, yet that discrepancy was also not reflected in his report.

Other than opiates, he was unaware if there were any other drugs that she had tested positive for when she arrived at the jail. At no time prior to, or after he interviewed

C.H., did he review her intake file. He acknowledged that no charges of improper demeanor, cursing or threats were sustained against Holder.

Despite being told by Holder, Templeton acknowledged that his report does not mention that Holder was hit by the cell door when C.H. kicked it the second time. He went on to comment, however, that Holder herself, failed to report it after the incident.

He was also asked whether he had shown R.B. the CCTV coverage prior to testifying to which he stated that he had not. He was not the officer that had picked her up. In going through the CCTV coverage, he acknowledged that there was no coverage of Holder pushing R.B. into the doorjamb outside of the cell. He also acknowledged that there was no coverage of R.B. hitting her head anywhere, nor did he take any pictures of her head where she claimed to have hit it. While he did not take any pictures, he did have the Medical Unit check her out and they documented an injury. He went on to state that while he had no way to confirm it, he still felt R.B.'s version of events plausible that she had hit her head on the doorjamb.

In questioning Templeton regarding R.B.'s statement of what had occurred immediately prior to the incident, he stated that R.B. had informed him that the cell door had popped open. When that occurred, she thought it was recreation time and she wandered went out. He agreed that she could not have been returning a lunch tray as lunch had ended a couple of hours prior.

Templeton was also asked about the difference between use of force and physical contact. According to Templeton, an example of physical contact was escorting an inmate from place to place, possibly grabbing their elbow and guiding them. When physical contact occurs, there is no need to fill out a use of force form. He acquiesced that if Holder was attempting to lock the door, it would have been reasonable to instruct C.H. to sit on her bed. However, if she was as non-compliant as Holder stated, Holder should have called the response team. He acknowledged that if the response team had been called in, they may have used physical force to get C.H. to comply. He also acknowledged that refusal to follow a verbal command can result in use of physical force

- however, it depended on the circumstances and at no time should a housing officer go into a cell on their own or use force.

He disagreed that C.H. and R.B. talked to each other and made up their stories. While their stories may have been embellished, the incidents did occur and much of what they claimed was verified by the CCTV coverage. He was aware that R.B. had made prior claims against Holder which turned out to be false. However, Holder was charged with being untruthful because she denied that the incidents occurred and claimed that they were completely fabricated.

In going through his interview with Holder, Templeton acknowledged that Holder had reported that R.B. was improperly outside of her cell prior to the incident trying to use the phone. She also stated that R.B. was stumbling and falling and that she (Holder) was trying to get her back into the cell and have her sit on the bed so that she could lock the door, however, R.B. refused to comply. Templeton disagreed with the notion that Holder was steering R.B. away from the door so that she could close it. His interpretation of the CCTV coverage was that Holder lunged at R.B. from behind and used physical force when she shoved R.B. in the back.

He did not review Holder's training file to see what training she has had since the academy fifteen years prior, but he did look to see if she had signed off on the Use of Force Policy - which she had.

Alexis Hoglen (Hoglen), a correctional officer with the SCCF testified that she has been employed at the facility for the past several months - assigned to the housing unit. She recalled an incident that took place in September 2020, involving C.H. She had been on the job for approximately a month and a half at the time on night shift. On the night in question, she had relieved Holder - the day shift officer. Around eight o'clock that evening, when C.H. came out to get her medication, she (Hoglen) overheard her talking to another inmate about an incident that had occurred earlier in the day with Holder. A short time later, C.H. asked to speak to her. After she finished what she was doing, she went to talk to C.H. who told her about an argument/altercation that had taken place earlier in the day, between herself and Holder.

According to C.H., the argument was about her cell door not properly locking. C.H. admitted to her that she had used offensive language during the argument - at one point calling Holder a "bitch". When she called her a bitch, Holder came into the cell, choked her and pushed her down on the ground. After that, Holder left her cell and went on with her duties.

After speaking to C.H., she contacted her Sergeant and reported the incident. Her Sergeant told her he would look into the matter and about an hour later, he called her back and told her to write a report. (P-7 and R-1.)

On cross-examination, Hoglen was asked whether C.H. told her that Holder had choked her with two hands to which she replied yes. C.H. also told her that Holder did not choke her for very long, and that a no time did she lose consciousness or fall.

When asked if she had reviewed her statement after she had provided it, she stated that she had not, but Templeton had given her a copy of it the day before the hearing.

Carla Jefferson (Jefferson), a Lieutenant with the SCCF testified that she has worked at the facility for approximately twenty years. When she first started, she was a housing officer and over the years, had worked her way up the ranks.

She was made aware of an incident that had been reported by inmate C.H. on September 27, 2020, wherein C.H. reported that Holder had hit her. Upon learning of the alleged incident, she went and watched the CCTV coverage. Review of the coverage found that C.H. appeared to be upset over something. She observed Holder walking to the cell door and saying something to C.H. and then closing the door and walking away. C.H. kicked the door at which point Holder came back to the door threshold and put her radio to her mouth. According to Jefferson, when she saw this, she thought that Holder was calling in a code, but she did not. Holder instead, closed the door again at which point C.H. once again kicked open. When this occurred, Holder came back into the cell and appeared to either grab or push C.H. by the neck and shove her onto the bunk.

According to Jefferson, housing officers are not supposed to go into an inmate's cell without another officer, nor are they allowed to use force when they are not being threatened. She recalled Holder attending the October 2019, Use of Force training.

On cross examination, Jefferson stated that she has known Holder for the past five years and has some interactions with her. During those interactions, she has never heard Holder use profanity. To the best of her knowledge, Holder does not have a reputation as an officer that curses at the inmates. She is aware that Holder is a pastor. The incident came to her attention as part of the chain of command reporting – specifically, it was reported to her by Sergeant Devalt, who learned of the incident from Hoglen. Upon learning of the incident, she contacted the Medical Unit to have them go and do a wellness check on C.H.

In her review of the CCTV coverage, she could not tell if Holder was yelling or being loud. All she saw was Holder's mouth moving. After the incident had been reported, she did say something to Holder who told her that when C.H. had kicked the door the second time, it hit her. If that occurred, she (Jefferson) did not see it given the angle of the footage. While she viewed the camera coverage, she could not say for certain that the door hit her when C.H. kicked it the second time, however, she did see Holder immediately rushing in.

She is familiar with the use of force policy and stated that under the policy, a housing officer is only allowed to use force when they are in immediate danger and are protecting themselves. At the time this incident occurred, while there were other inmates out and about, they were in the upstairs tier.

In questioning Jefferson on what type of training has been provided to the corrections officer for use of force, she stated that the last training she recalled was in October 2019. They have received other training but that has been online. While the policy states that all security and custody personnel will receive annual training in proper methods and techniques, the only training they receive is on policy and procedure. There is no physical training.

When questioned, Jefferson acknowledged that she had been provided a copy of her statement prior to her coming in to testify.

John Cuzzupe (Cuzzupe), the Warden of the SCCF testified that he has been at the facility for the past five years. Prior to that he was with the New Jersey State Police for twenty-five years.

He was first made aware of an incident involving C.H. from Captain Danks who in turn had been notified by Jefferson. Upon learning of the incident, an internal investigation was started, and the inmates were interviewed. When he received Templeton's investigative report, he reviewed it. The report sustained the allegations that had been asserted by C.H. and R.B. - in large part, because of the CCTV coverage. The CCTV coverage supported their claims which in turn made their statements credible. As a result of Templeton's findings, a PNDA was issued recommending that Holder be terminated from her position as a corrections officer. The recommendation was not based solely on the incident in question, but for other prior incidents which resulted in progressive discipline.

He is familiar with the Use of Force Policy and he personally reviewed the CCTV footage. Based upon his knowledge of the policy and what he observed in the footage, it was his belief that Holder did not use physical contact rather, physical force. Holder initiated force upon an inmate that was not justified. Even if C.H. had kicked the door three times and the door had hit Holder, there was no basis for Holder to use physical force. There was no immediate threat to her, and the best decision would have been to back away from the door and call a code. Instead, she went inside the cell, one-to-one with an inmate –against policy, while other inmates were out in the unit. There was no justification to strike the inmate. Additionally, she did not file an incident report as required under the policy and pursuant to the Attorney General Guidelines.

It is his belief that by not filling out an incident report, Holder's credibility was called into question. This was because after the incident occurred and was reported, Holder attempted to justify her use of force asserting that she did the right thing under the

circumstances. According to Cuzzupe, doing the right thing would have required Holder to report the incident and complete a use of force form where it would have been reviewed by her superior officers. The facility has a stringent policy to preclude such incidents.

Cuzzupe went on to state that Holder has a credibility problem and has in the past, received major discipline for falsification. Based upon her prior disciplinary history, she was placed into the Early Warning Intervention Program, which is in essence, a last chance program. At the time she was entered into the program, it was the facility's thought that part of the problem with Holder was that she, due to the shift she was working – night shift, she was tired and unable to complete her rounds. To remedy this problem, in January 2020, they moved her to the day shift and assigned a training sergeant to work with her and provide counseling sessions on the identified deficiencies. According to Cuzzupe, tremendous efforts were made to save Holder's job.

When the incidents involving R.B. and C.H. came to light, there was significant concern given Holder's disciplinary history, today's climate that required transparency, and the need for organizations to properly monitor the use of force within their agencies. Given Holder's disciplinary history, the fact that she engaged in use of force and failed to report it, such conduct created a huge liability issue and left them little choice other than to terminate her because they could not defend her actions.

Cuzzupe went on to state that they had given Holder plenty of opportunities and time to remediate her deficiencies, however, she did not take advantage of the opportunities provided.

On cross-examination, Cuzzupe was asked about Holder's prior disciplines and the fact that most, if not all, centered on time and attendance and rounds. In response he stated that she had been disciplined for time and attendance in the past, but she had also been disciplined for lack of truthfulness. He acknowledged that none of her prior disciplinary actions were for use of force. When questioned whether he believed everything that R.B. and C.H. attested to, Cuzzupe stated that he did not. However, he felt that their respective statement(s) of events were more credible than Holder's explanation. He was aware that Holder acknowledged that she put her hands on R.B.

and C.H. and that she stated in hindsight, she should have documented what had occurred.

He disagreed with the notion that neither inmate was injured. Citing to the medical staff report Cuzzupe noted that C.H. had an abrasion on her lower leg, which was consistent with Holder's boot stepping into her, and R.B. had a pea-size bump on her head. He acknowledged that other than the medical unit notations, there was no other documented evidence such as a photo or even a video that reflected R.B. hitting her head.

He was aware that the medical staff had documented that R.B. was argumentative when she was examined, however, that was not a consideration in his determination in this matter. By rule, inmates are not permitted to be argumentative to housing officers, if they are however, the officers know how to deal with it.

Cuzzupe was also asked whether he authorized Templeton to provide R.B. and C.H. with copies of their statements. In response he stated that he had not, however, he did not see a problem with a witness reviewing their own statement to refresh their recollection prior to testifying. He did not believe that C.H. intentionally changed her testimony after reviewing the CCTV footage prior to testifying - he still found her to be credible.

Cuzzupe was also questioned about his earlier testimony that Holder should have called a code and was queried about what a code 1078 was. In response he stated that a 1078 was a call for assistance. When a 1078 is called in, the response team responds. He went on to state that the SCCF is a direct supervision facility and the housing officers are tasked with supervising the safety and welfare of inmates. When an officer feels that an inmate is acting inappropriately, becoming a behavior issue, or a threat, they call a code. When a code is called, the response team, which typically consists of at least four members, responds to quell the issue. Upon arrival, the housing officer briefs them, and the team assess the situation. Additionally, when a code is called, all officers on break are required to immediately go back to their post.

According to Cuzzupe, the response team does not immediately go in and use force - it depends on the situation. Sometimes constructive force is necessary, other times, just the arrival of the team simmers the inmate down. Given the unit that both C.H. and R.B. were on, the mere arrival of the response team on the unit would have most likely quelled the situation.

While Holder did quell the situation in both C.H. and R.B.'s case, she did so only after using force. He went on to reiterate that use of force is only justified in certain circumstances. Under the policy, use of force may be used to prevent or quell a riot or a disturbance. The policy also states that no force shall be considered justifiable as punishment or discipline. He believes that Holder's actions were meant to punish and/or discipline R.B. and C.H. (P-22.) Cuzzupe went on to state that the investigation into both instances found that neither inmate was causing a disturbance that justified the level of force used by Holder. When questioned whether race played a part in C.H. and R.B.'s claims against Holder, he stated that while that may have been the inmate's perception, such beliefs and/or claims had no bearing on the investigation or determinations that were made in her case.

Cuzzupe agreed that the use of force policy stated that a minimum amount of force was allowed to achieve a legitimate goal. He went on to state, however, that in C.H.'s situation, no force was warranted. There was no reason to require C.H. to sit on her bed which is what Holder stated her objective was so that she could lock the door. C.H. wasn't attempting to leave the cell and there was no reason for Holder to enter the cell. Holder could have walked away and made arrangements to move C.H. which is ultimately what happened.

In questioning Cuzzupe whether R.B. was improperly out of her cell and using the phone, Cuzzupe stated that the proofs were incomplete for such a determination. He agreed, however, that R.B. was not out of her cell returning a tray since the lunch hour had long since passed. What he did find found credible about R.B.'s statement was that she had been assaulted. This was supported by the CCTV coverage.

Shereece Holder (Holder), testified that she started working in corrections twelve years ago. She has been with SCCF for over six years and prior to that she was with the Gloucester County Corrections (GCC). In addition to being a corrections officer, for the past eight years she has been a pastor and oversees three different churches. As a practice, she does not curse – a fact that her co-workers understand and respect.

Since she has been with the SCCF, she has received use of force training, however, the training is more theory than practice. It was not the same as the training that she had received when she was with GCC which was more hands on and different.

She is familiar with C.H. and R.B. who were inmates on the Initial Intake Unit. This is a unit where detoxing inmates are placed. According to Holder, inmates who are detoxing are not very stable and their behaviors can at times be erratic (e.g. kicking doors, screaming, yelling, smearing bodily waste on cell walls).

She recalled the incident with R.B. which occurred after the nurse had left the unit and she was starting her tour. When she rounded the unit corner, she saw R.B. sitting on the floor, talking on the phone. This was prohibited at the time since it was lockdown time, and R.B. was not allowed to be out of her cell. She had to tell R.B. several times to get off the phone and up off of the floor, however, R.B. ignored her commands and continue talking on the phone.

It wasn't until she told R.B. that she had two seconds to get off of the phone and back into her cell that she finally started to get up. When she was attempting to stand up, R.B. staggered and started to fall - grabbing on to her (Holder) which in turn caused her to take a step back. She put R.B.'s instability down to her detoxing and not as an aggressive move. As they started to move towards the cell, R.B. continued to stagger as she shuffled along – all the while cursing and carrying on. At one point, R.B. started going in the wrong direction - continuously turning towards her and leaning back into her (Holder) - repeatedly saying that she did not have to go back into her cell. She had to guide R.B. in the direction of her cell and when they reached it, R.B. was still cursing and saying that she did not have to go in and pushing her body back into her. When they reached the cell door, she shoved R.B. It was her belief that R.B. would try to push back

into her again in an effort to resist going in. After she pushed her in, she shut the cell door. She continued to talk to R.B. - trying to reason with her and explain that she could not just come out of the cell when she wanted to. According to Holder, after the incident, R.B. apologized to her for her conduct earlier.

Holder went on to explain what happened with C.H. the following day. Prior to the incident, on multiple occasions, C.H. asked to have a "Bunkie" or a roommate. On the date in question, when she came back from break, C.H. told her that the break officer said that she (Holder) had the ability to move her. When she started her rounds, she noticed the C.H. was talking to two other inmates. She told C.H. that she was not supposed to be talking to inmates from another section which is when C.H. started asking her multiple questions. One minute she would be asking her questions, the next she would go off on how poorly she had been treated and then she would ask if she could be moved. C.H. demeanor at that point was still conversational and not irate. As she was talking to her, C.H. continually open and closed the cell door – asking her a question every time she opened the door. When she told C.H. that the cell door had to remain closed, she would open it again and say that she had another question. She tried to explain to C.H. that she did not have authority to move her in with a "Bunkie" and that it would have be cleared. She told C.H. to sit on her bunk so that she could finish her rounds and check to see if she could be moved and closed the cell door. That is when C.H. kicked the door open so hard that it slammed into the wall and bounced off. When this occurred, she went back to C.H.'s cell, opened the door and told C.H. to sit on her bunk until she was done her rounds, however, C.H. continued to carry on. According to Holder, she closed the cell door again and it should have locked but it didn't which is when she realized that there was a problem with the door. This was also when C.H. kicked the door a second time and it hit her.

When this happened, she reflexively went in and pushed C.H. back – her hand placed between her neck and breast area. She did not choke her. C.H. landed on her bunk when she did that. She told C.H. that she had better not do that again or a code would be called. She only threatened to call a code, but she never intended to call one because she believed that the situation was under control. When she threatened to call a code, C.H. backed off and quieted down. While C.H. had created a disturbance, she

was used to such disturbances. She also did not want to call a code because sometimes the team that comes in uses unnecessary force. Once C.H. quieted down, she left C.H.'s cell and returned five minutes later to move her to a different cell. C.H. was subsequently moved again, this time into the same cell as R.B. She believed that when C.H. and R.B. were placed in the same cell together, that was when they concocted their stories.

Holder went on to testify that after her shift was over and she had gone home, she received a call from a co-worker who told her that they had heard that she had choked an inmate. This was before she had been contacted by IA. She did not hear about R.B.'s allegation that she had slammed her head on a doorjamb until she subsequently spoke to her attorney.

At no time did she believe she was using physical force on R.B. or C.H. She only used physical contact. Her intent at all times was for them to comply. Holder went on to state that had she known how much trouble this caused, she would have written a report and filled out a use of force report. Apparently, what she deems a disturbance is not the same as the county's definition. She used her discretion at the time and thought that she was doing the right thing.

On cross-examination, Holder was asked what the distance was between the phone bank and R.B.'s cell and how long it took to get from the phones to the cell. In response she stated that the distance was approximately three feet, however, she could not say how long it took to get to the cell. When informed it was a minute, she responded by saying that a lot could happen in a minute.

In going through what had occurred in that minute based upon her testimony - i.e. R.B. standing up from the floor, R.B. stumbling into her, R.B. turning around and attempting to resist getting into the cell, her shoving R.B. in the back into the cell, Holder stated that R.B., while not fighting her, was pushing her body back into hers.

When shown the CCTV coverage of R.B. entering the cell, Holder was asked if R.B. was leaning back into her. Holder responded by saying that R.B. was still resisting her at that point and saying that she did not have to go back into her cell. She disagreed

that her hand was not on R.B.'s back when she entered the cell - stating that there was a blind spot and that her extended hand could not be seen on the footage.

Holder was also asked about codes and when she would call one. In response she stated that she does not like calling codes and uses her discretion as to whether or not one is necessary. If she cannot handle a situation, she calls a code. She acknowledged that this was not the first time that she has pushed an inmate because when she worked in GCC, they were trained differently. When asked given the number of years that she had worked at SCCF and having received the same number of years of training, whether pushing an inmate was proper, Holder stated that it was. She believed she was escorting/maneuvering R.B. back into her cell which is permitted. While she acknowledged that she had last received use of force training in October 2019, and took at test, she again reiterated that she did not use force on R.B. (R-26.)

When questioned about her earlier statement that kicking a door was sufficient to complete an operations report, Holder altered her earlier statement by saying that it was in the discretion of the officer. If the behavior continued, or if the door hit her when the inmate kicked it, then yes. When questioned about what had occurred with C.H. and the fact that C.H. had continuously kicked the door and the door in fact hit her, Holder again modified her earlier statement by saying that if she had been hurt and had to call a code, then she would have done an incident report and a use of force report. When asked where the door hit her – leg or foot, this too evolved as she continued to testify.

In asking Holder why she did not walk away when the door hit her, she stated that it was a split-second decision which she felt was reasonable. When the door hit her, she moved right in and pushed C.H. onto her bunk. Instead of calling a code, she chose to go in and push C.H. She recalled C.H. telling her that she had a pacemaker after she had shoved her, but she did not call the medical unit.⁶

It was her belief that both C.H. and R.B. showed aggression towards her. C.H. was continuously cursing and kicking her cell door because she wanted to be moved.

⁶ In her taped statement, Holder stated that she did not call the medical unit because she believed that C.H. was "fine".

R.B. was agitated because she could not use the phone and would not go back into her cell – repeatedly shuffling her feet and backing into her. She denied trying to cover up both incidents by not reporting them. Holder felt that it was solely within her discretion not to call a code or report the matters because she had diffused both situations.

FINDINGS OF FACT

When assessing credibility, inferences may be drawn concerning the witness' expression, tone of voice and demeanor. MacDonald v. Hudson Bus Transp. Co., 100 N.J. Super. 103 (App. Div. 1968). Additionally, the witness' interest in the outcome, motive or bias should be considered. Credibility contemplates an overall assessment of the story of a witness in light of its rationality, internal consistency, and manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963).

A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

I **FIND** the testimony of R.B. in part, less than credible. While some of her testimony was supported by the CCTV footage, other parts were inherently inconsistent and also inconsistent with her taped statement and statements made to other SCCF staff members.

For instance, R.B. testified that she was putting her breakfast/lunch tray away and was on her way back to her cell when the incident occurred. There was nothing in her taped statement about putting a tray away. Indeed, according to R.B. in her statement, her door buzzed open and she stepped out and was immediately told by Holder to get back into her cell. In both her testimony and in her taped statement, she denied heading to the phone bank when she left her cell.

In her taped statement, R.B. stated that she did not feel that Holder's actions were racially motivated yet when she testified, she stated that she was singled out because she was white. Other discrepancies can be found between her testimony and the CCTV coverage. R.B. testified that Holder shoved her twice, yet she told the medical unit that she had been shoved once. R.B. also testified that the first time she was shoved, she hit her head on the doorjamb causing a pea-sized lump. She also testified that the momentum of the first shove caused her to spin around and walk backward which is when Holder shoved her a second time.

The CCTV coverage on the other hand, shows Holder forcefully shoving R.B. once in her back. R.B. was not walking backwards into the cell, in fact, she was in the cell, with her back to Holder when Holder shoved her. When this occurred, she was propelled forward and stumbled onto her bed – her fall broken only when she placed her hands out in front of her onto the bed to stop the momentum. There is no coverage of Holder pushing her two times and I did not find her testimony credible on that point.

What was credible about R.B.'s testimony was the fact that on September 25, 2020, Holder forcefully shoved her into her cell. The CCTV coverage, which is the most reliable evidence in this matter, clearly shows Holder walking into her cell on her own two feet, not pushing back into, turning around, or resisting Holder. Holder is observed stepping into the cell and forcefully shove R.B. in the back, further into the cell.

Similar to R.B., I FIND that C.H.'s testimony was exaggerated and lacked credibility at times, however, there were several things which C.H. stated in both her taped statement and testimony which I found very credible and consistent with Holder's testimony, and more importantly, consistent with the CCTV coverage.

C.H. in her taped statement stated that she had repeatedly opened and closed the cell door before she kicked it two times. This was consistent with what Holder stated during her testimony which was that C.H. repeatedly opened and closed her cell door, asking questions the entire time. This was also seen on the CCTV coverage with C.H. opening and peeking out of her cell. C.H. in her taped statement at first stated that Holder came face to face with her and put her arm around her neck. This statement subsequently

changed to reflect that Holder placed both hands around her neck and choked her for a minute. This later changed to forty-five seconds. According to Hoglen, the officer whom she initially reported the incident to, and whose testimony I found credible, C.H. informed her that the incident happened very quickly with Holder choking her while she pushed her. This was also consistent with the CCTV coverage.

When C.H. testified, her story was different. She testified that Holder choked her for approximately forty-five seconds with two hands then this changed to one hand. She was asked multiple questions about this discrepancy between her taped statement and her testimony. At one point, C.H. stated that Hoglen's report was wrong. She subsequently changed her testimony by saying that it was very difficult, in the heat of the moment, to know whether Holder had one or two hands around her neck. Interestingly, it is unclear whether her testimony evolved because Templeton had unilaterally decided to show her CCTV footage immediately prior to the hearing, or if her recollection miraculously became better months after the incident than at the time, she gave her statement. In either event, her testimony was inconsistent with her taped statement and the CCTV coverage. Notably the CCTV coverage reflects Holder grabbing C.H. by the throat with one hand for two to three seconds at most.

In her taped statement, C.H. also claimed that when Holder started choking her with both hands, she told Holder about her pacemaker and to let go as she could not breathe. Her testimony differed and more importantly, so did the CCTV coverage. Holder did not choke her with two hands, the incident lasted seconds and it was not until Holder had shoved her onto the bed that C.H. disclosed that she had a pacemaker.

While there were several inconsistencies in C.H.'s testimony versus her statement and the CCTV coverage, I **FIND** that C.H. credibly testified that she was upset that her cell door would not properly close, and that she was constantly being interrupted when the corrections staff came around to do their checks. I **FIND** that she asked Holder to change her cell and that Holder and her got into a verbal dispute. I further **FIND** that after kicking the door a second time, Holder rushed into her cell and grabbed her by the neck and forcefully shoved her onto her bed. I **FIND** C.H.'s testimony credible that she was very upset after Holder had grabbed her by the neck and shoved her onto the bed which

was when she pointed to her pacemaker. CCTV coverage clearly supported her testimony in this regard.

In review of Templeton's testimony, I **FIND** that overall, Templeton's testimony was credible. Much of his report is factually based and supported by the statements of C.H., R.B., and Holder, as well as the facility documentation/logs and the CCTV coverage. While I took into consideration the fact that he unilaterally decided to provide C.H. with a copy of her statement and allowed her to view the CCTV coverage prior to the hearing without authorization, while in poor judgment, such action if any, impacted C.H.'s credibility while on the stand, and did not alter the substantive factual findings in his report.

Having considered the testimonial and documentary evidence presented by Cuzuppe, I found him to be credible and persuasive. His testimony was unwavering and exacting. He exhibited no ulterior motive aside from laying out the facts as he recalled them. Cuzuppe was candid in his testimony that he did not take at face value the entirety of R.B.'s and C.H.'s recitation of events but what he did find credible was their independent assertions that Holder had used force them which was consistent with the CCTV coverage.

I **FIND** Holder's testimony to be self-serving and disingenuous at times. One of the first things that she stated in her formal interview was that she had been trained differently in GCC and inferred that the level of force used on C.H. and R.B. would have been justified and appropriate in that county. This was also the first point she made during her testimony despite the fact that she had been with SCCF longer than she had been with the GCC and had been trained annually on the SCCF use of force policy. It appeared that she was justifying her actions before she had been questioned about them. She also stated that when incidents happen, her first instinct was to go back to her original training.

When questioned whether she used physical force versus physical contact when she shoved R.B. into her cell from behind, she stated that it was physical contact for compliance purposes only. Holder rationalized this by stating that she was guiding R.B. back to her cell due to her repeated attempts to lean back into her as she resisted going into her cell. The CCTV coverage clearly reflects otherwise. R.B. was walking on her

own two feet into her cell. She was not resisting as she entered the cell, leaning back into Holder or attempting to turn around and leave the cell. There appeared to be no guidance by Holder. In fact, CCTV coverage reflects that just prior to shoving R.B. from behind, Holder's hand was not on R.B.'s back, shoulder or waist for guidance purposes. Additionally, by her own testimony, Holder stated that R.B. was unsteady on her feet and shuffling. If that were the case, it was imprudent to shove much less forcefully shove such an individual in the back and create a fall risk. Her testimony and her conduct were inconsistent.

Holder also testified that she only used physical contact on C.H. to make her comply – not physical force. Once again, the CCTV coverage reflects otherwise. C.H. was not coming out of the cell after she had kicked the door - in fact, she was in the process of turning towards her bed when Holder came charging in, grabbed her by the throat and pushed her back on to the bunk.

Holder also stated that C.H. was creating a disturbance but that she (Holder) was used to that type of conduct. If that were the case, then the level of force that she used was unnecessary. The counter argument to that statement is, that if C.H. was creating a disturbance, and that level of force was necessary to quell it, then she should have called a code and reported the incident.

With the above in mind, having considered the testimonial, documentary and electronic evidence offered by the parties, in addition to the findings of fact noted above, **I FIND as FACT:**

On September 25, 2020, R.B.'s cell door opened, and she exited the cell. At the time R.B. exited the cell, the unit was in lockdown and she was not supposed to be outside of her cell. When Holder found R.B., she repeatedly commanded that she return to her cell. R.B. initially ignored Holder's commands, however, eventually complied – albeit slowly, and went back to her cell.

CCTV coverage reflects that when R.B. crossed the threshold of the cell, Holder's hand was not on her back guiding her. While moving slowly into her cell, she entered on

her own two feet, had her back to Holder, was non-combative and was not resisting. Upon crossing the threshold, Holder stepped into the cell behind her, and forcefully shoved R.B. further into the cell, causing her to trip over the bed. Holder then stepped out, slammed the cell door shut as R.B. approached the door. Holder initially walked away but came back at which time she and R.B. had what appeared to be a heated conversation – Holder repeatedly rapping on the window of the door and R.B. talking back and pointing up to the camera.

Holder did not report the incident to her supervisor, did not note the incident in the logbook, did not file a use of force report or call medical for R.B. to be evaluated. No credible evidence was presented to support R.B.'s claim that Holder had shoved her twice or that she hit her head. While R.B. had a pea-sized lump on her head, once again, without credible evidence, such charge by R.B. lacked credibility.

On September 26, 2020, inmate C.H.'s cell door was not properly locking. When Holder came back from break, C.H. asked Holder to change her cell. C.H. became upset and argumentative with Holder. CCTV coverage reflects that as this exchange was happening, Holder motioned at least six or seven times to C.H.'s bunk for her to sit down. When Holder went to leave and close the door the first time, C.H. violently kicked the door open, causing it to bounce off of the wall and close again.

CCTV coverage reflects that after this occurred, Holder came back into the cell – and stood on the threshold as she spoke to C.H. As she did this, she held up her radio. Throughout this exchange, C.H. was agitated, continuously talking and gesturing with her hands and moving around her cell. At no time, however, did C.H. lunge, approach or become combative with Holder. At no time did she attempt to leave her cell. When Holder closed the door the second time, C.H. continued to be agitated – continue to talk and gesture. She again approached the cell door and kicked it – this time with significantly less force.

When this happened, Holder rushed into the cell, rapidly approached C.H. and grabbed her around her throat with one hand, forcefully shoving her back and causing C.H.'s body to propel backward and land hard on the cell bed.

When C.H. got back on her feet, Holder approached her, causing C.H. to back up and ultimately sit down on the bed as Holder walked in and stood over her. C.H. was visibly upset and pointing to her chest, pulling down her shirt collar as she did this and pointing to where her pacemaker was located. After Holder left the cell, C.H. continued to sit on the bunk, at one point lifting her left leg and looking at her left ankle which had become scraped as a result of the incident.

Holder did not call a code, report the incident to her supervisor or record the incident in the logbook. While Holder claimed that the door hit her after C.H. had kicked it a second time, assuming arguendo it did hit her leg, she failed to report the same. Holder did not file a use of force report nor did she notify medical even though C.H. informed her that she had a pacemaker and was clearly distraught over what had occurred as evidenced by her repeated gesturing to her chest where her pacemaker was located.

After the incident occurred with C.H., Holder moved her into a different cell and from there, she was moved a second time into the same cell as R.B. I did not find R.B.'s and C.H.'s testimony credible that they did not discuss their respective incidents involving Holder. This finding is bolstered by the fact that both R.B. and C.H. claimed that Holder's actions were racially motivated although R.B. in her taped statement stated otherwise, and that Holder repeatedly used profanity and threatened them with bodily harm – none of which was supported by the record.

C.H. reported the incident to Hoglen who in turn notified her supervisor who then notified Jefferson. IA was notified and Templeton responded and conducted an investigation into the matter.

I further **FIND** that while Templeton's report failed to specifically identify or give weight to the discrepancies between C.H. and R.B. reporting and the CCTV coverage, documentary evidence and to some extent Holder's statements to the contrary. While his report and investigative findings could have been more comprehensive and thorough in

its analysis, such omission is not fatal to his overall findings given the weight of the other evidence present in this matter.

LEGAL ANALYSIS AND CONCLUSION

A civil service employee's rights and duties are governed by the Civil Service Act (Act) and regulations promulgated pursuant thereto. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1. The Act is an inducement to attract qualified individuals to public service positions and is to be liberally construed toward attainment of merit appointments and broad tenure protections. Essex Council No. 1, N.J. Civil Service Association v. Gibson, 114 N.J. Super. 576, 581 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1972), citing Mastrobattista v. Essex County Park Commission, 46 N.J. 138, 145, 147 (1965).

A civil service employee who commits a wrongful act related to their employment may be subject to discipline, which may be a reprimand, suspension, or removal from employment, depending upon the incident. N.J.S.A. 11A:1-2; 11A:2-20; N.J.A.C. 4A:2-2. Public entities should not be burdened with an employee who fails to perform their duties satisfactorily or they engage in misconduct related to their duties. N.J.S.A. 11A:1-2(a). Thus, a public entity may impose major discipline upon a civil service employee, including termination/removal from their position. N.J.S.A. 11A:1-2; N.J.A.C. 4A:2-2.2.

The appointing authority employer has the burden of proof to establish the truth of the disciplinary action brought against a civil service employee. N.J.A.C. 4A:2-1.4(a). The standard of proof in administrative proceedings is by a preponderance of the credible evidence. N.J.S.A. 11A:2-21; N.J.A.C. 4A:2-1.4(a); and see, Atkinson v Parsekian, 37 N.J. 143, 149 (1962). Evidence is considered to preponderate "if it establishes the reasonable probability of the fact." Jaeger v. Elizabethtown Consolidated Gas Co., 124 N.J.L. 420, 423 (Sup. Ct. 1940) citation omitted. The evidence must "be such as to lead a reasonably cautious mind to a given conclusion." Bornstein v. Metro Bottling Company, 26 N.J. 263, 275 (1958).

Holder's status as a correction's officer subjects her to a higher standard of conduct than an ordinary public employee. In re Phillips, 117 N.J. 567, 576-77 (1990). Law enforcement employees, such as a Corrections Officer, represent "law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public." Township of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), cert. denied, 47 N.J. 80 (1966). In military-like settings such as police departments and prisons, it is of paramount importance to maintain strict discipline of employees. Rivell v Civil Service Commission, 115 N.J. Super. 64, 72 (App. Div.), cert. denied, 59 N.J. 269 (1971); Newark v Massey, 93 N.J. Super. 317 (App. Div. 1967).

Here, it was determined in the FNDA that there were fifteen sustained charges against the appellant, warranting her removal as a corrections officer, effective October 16, 2020. Each charge is enumerated and addressed below.

The sustained charges against appellant were:

1. N.J.A.C. 4A:2-2.3(a) - General causes

- (1) Incompetency, inefficiency or failure to perform duties;
- (2) Insubordination;
- (3) Inability to perform duties;
- (6) Conduct unbecoming a public employee;
- (7) Neglect of duty;
- (12) Other sufficient cause - specifically SCCF Departmental Rules and

Regulations:

- Rule 3:1.7 (Neglect of Duty)
- Rule 3:1.29 (Withholding Information)
- Rule 3:5.7 (Truthfulness)
- Rule 3:1.1 (Standards of Conduct)
- Rule 3:1.5(3) (General Responsibilities)
- Rule 3:1.11 (Obedience to Laws and Regulations)
- Rule 3:2.20 (Use of Force)
- Rule 3:1.33 (Civil Rights)
- Rule 3:2.1 (Prohibited Activity on Duty)
- Rule 3:8-4 (Truthfulness)

The appellant asserts that all charges against her should be dismissed because the Division's two main witnesses, R.B. and C.H., testimony lacked any residuum of credibility and was outright false, and that the investigation into the matter was flawed. The appellant further asserts that the Division failed to provide a scintilla of evidence that there was a violation of the SCCF Use of Force Policy.

For the reasons set forth more fully below, I disagree.

N.J.A.C. 4A:2-2.3(a)(1) - Incompetency, inefficiency or failure to perform duties; Incompetency, inefficiency or failure to perform duties.

Appellant failed to perform her duties when she, on two separate occasions with two separate inmates, used inappropriate force. The first instance occurred with R.B. when she forcefully shoved from behind as R.B. was walking into her cell. The shove was with such force that R.B. flew forward, tripped on her bed and almost toppled over. R.B. was not resisting, was not leaning into appellant as the appellant claimed and was not combative. In all respects she appeared to be compliant and moving into her cell. Even if the appellant's testimony was true - that she was escorting R.B. back to cell because she was unsteady on her feet, shuffling and repeatedly leaning back to resist going into the cell, appellant's shove becomes even more egregious. To shove an individual from behind, with such velocity and without any provocation or notice, could have resulted in R.B. getting seriously injured. Such level of force given the situation was unnecessary. Appellant did not report the incident to her supervisor, did not file it in the logbook, or file a use of force report. In appellant's erroneous opinion, it was within her discretion to use the level of force that she had and further justified her actions by testifying that she had the situation under control.

The second incident occurred the following day with the appellant demonstrating the same conduct with C.H. In C.H.'s case, C.H. was verbally acting out and had kicked her cell door open two times – the first time with force and the second time with significantly less force. At no time did she attempt to leave the cell or rush towards appellant. When C.H. kicked the door the second time, appellant immediately rushed into

C.H.'s cell, grabbed her with one hand by the neck and forcefully shoved her back. Similar to R.B., appellant's actions caused C.H. to trip over her bed as she stumbled backwards due to the force of the shove. When C.H. got up from the bed, appellant approached her, causing C.H. to sit down again. Appellant, who was completely in the cell at this time, stood over C.H. which required her to look up as Appellant spoke to her. C.H. was clearly distraught as she told appellant about her pacemaker and showed her where it was located.

Appellant did not report the incident, did not call a code which should have occurred when C.H. kicked the door the first time. She did not file a use of force report and more importantly, did not call the medical unit. As in R.B.'s case, it was appellant's belief that her actions were justified given the situation and within her discretion. She is mistaken. The whole situation could have been avoided if appellant had called a code or walked away. She did neither.

Therefore, I **CONCLUDE** that Appellant's conduct did rise to a level of incompetency, inefficiency, and failure to perform duties, in violation of N.J.A.C.4A:2-2.3(a)(1).

N.J.A.C. 4A:2-2.3(a)(1) - Insubordination.

Black's Law Dictionary 802 (7th Ed. 1999) defines insubordination as a "willful disregard of an employer's instructions" or an "act of disobedience to proper authority." Webster's II New College Dictionary (1995) defines insubordination as "not submissive to authority: disobedient." Such dictionary definitions have been utilized by courts to define the term where it is not specifically defined in contract or regulation:

'Insubordination' is not defined in the agreement. Consequently, assuming for purposes of argument that its presence is implicit, we are obliged to accept its ordinary definition since it is not a technical term or word of art and there are no circumstances indicating that a different meaning was intended.

[Ricci v. Corporate Express of the East, Inc., 344 N.J. Super. 39, 45 (App. Div. 2001) (citation omitted).]

Importantly, this definition incorporates acts of non-compliance and non-cooperation, as well as affirmative acts of disobedience. Thus, insubordination can occur even where no specific order or direction has been given to the allegedly insubordinate person. Insubordination is always a serious matter, especially in a paramilitary context. "Refusal to obey orders and disrespect cannot be tolerated. Such conduct adversely affects the morale and efficiency of the department." Rivell v. Civil Serv. Comm'n, 115 N.J. Super. 64, 72 (App. Div.), certif. denied, 59 N.J. 269 (1971).

Appellant intentionally used physical force against R.B. and C.H., intentionally did not call a code in either incident, intentionally did not report either incident and intentionally did not file a use of force report. On all accounts, she failed to follow proper policy and procedure of the facility.

For all of the foregoing reasons, I **CONCLUDE** that appellant's conduct did rise to a level of insubordination in violation of N.J.A.C.4A:2-2.3(a)(2).

N.J.A.C. 4A:2-2.3(a)(3) - Inability to perform duties.

An employee must be able to physically, intellectually, and psychologically perform his or her duties. Where an employer brings a charge under N.J.A.C. 4A:2-2.3(a)(3) it is challenging the employee's ability to perform the duties associated with the position and is seeking to remove the employee or demote him or her to a different position, but is bringing a charge that is not, strictly speaking, disciplinary in nature. However, from the employee's point of view, the outcome may be just as severe as if it were a disciplinary charge.

There was no evidence presented in this matter that the appellant was unable to perform her duties – rather, she just chose not to.

For the foregoing reason, I **CONCLUDE** that the respondent has not met it's

burden as it relates to the charge of Inability to Perform Duties (N.J.A.C. 4A:2-2.3(a)3)

N.J.A.C. 4A:2-2.3(a)(1) - Conduct Unbecoming a Public Employee.

Conduct Unbecoming a Public Employee is an elastic phrase, which encompasses conduct that "adversely affects the morale or efficiency of a governmental unit or that has a tendency to destroy public respect in the delivery of governmental services." Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998); see also, In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960). It is sufficient that the complained-of conduct and its attending circumstances "be such as to offend publicly accepted standards of decency." Karins at 555 [quoting In re Zeber, 156 A.2d 821, 825 (1959)]. Such misconduct need not necessarily "be predicated upon the violation of any particular rule or regulation but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992) [quoting Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 429 (1955)]. Suspension or removal may be justified where the misconduct occurred while the employee was off duty. In re Emmons, 63 N.J. Super. 136 at 140.

Here, it is undisputed that appellant improperly used force on R.B. and C.H. when she shoved them in their respective cells. She failed to report the incidents to her supervisor; note the incidents in the logbook; failed to file a use of force report as required by the policies and procedures of the SCCF; and failed to contact the Medical Unit after she shoved C.H. and C.H. disclosed that she had a pacemaker. While I did not find R.B. and C.H.'s testimony to be entirely credible, their testimony was not fabricated or contrived when they reported appellant's independent incidents of use of force against them. Their testimony was more than supported by the CCTV coverage.

For the foregoing reasons, I **CONCLUDE** that the respondent has met its burden in demonstrating that appellant's conduct rises to the level of Conduct Unbecoming in violation of N.J.A.C. 4A:2-2.3(a)7.

N.J.A.C. 4A:2-2.3(a)(7) - Neglect of Duty.

Neglect of Duty can arise from an omission or failure to perform a duty and includes official misconduct or misdoing, as well as negligence. Generally, the term "neglect" connotes a deviation from normal standards of conduct. In re Kerlin, 151 N.J. Super. 179, 186 (App. Div. 1977). Neglect of duty implies nonperformance of some official duty imposed upon a public employee, not merely commission of an imprudent act. Rushin v. Board of Child Welfare, 65 N.J. Super. 504, 515 (App. Div. 1961).

For the reasons previously cited above, it is clear that the appellant neglected the duties and responsibilities imposed upon her. Therefore, I **CONCLUDE** that the respondent has met its burden in demonstrating that the appellant is guilty of Neglect of Duty (N.J.A.C. 4A:2-2.3(a)7).

N.J.A.C. 4A:2-2.3(a)(1) - Other Sufficient Cause

Rule 3:1.7 (Neglect of Duty), states in pertinent part: "Employees shall not commit any act nor shall they be guilty of any omission that constitutes neglect of duty as defined under these rules and regulations and recognized by New Jersey law."

Based on the foregoing facts and evidence set forth above, I **CONCLUDE** that appellant's conduct rose to the level of neglect of duty, in violation of SCCF Rule 3:1.7.

Rule 3:5.7 (Truthfulness) and Rule 3:8-4 (Truthfulness).

Rule 3:5.7 states in pertinent part: "Employees shall not knowingly lie, give misleading information, or falsify oral or written communications in any official report when it is reasonable to expect that the information may be relied upon because of the employee's affiliation with this agency.

Rule 3:8-4 states in pertinent part: "Employees are required to be truthful at all times whether or not under oath."

The basis for this charge was the act of omission by appellant in failing to report her use of force against both R.B. and C.H. Holder's lack of reporting was either unintentional on her part because she believed that her actions were physical contact and not physical force or intentional because she did not want to disclose what had occurred. Based upon the evidence presented in this matter, the latter appears to apply. There was no justification for the level of force used against either inmate and by appellant's own admission, as it related to C.H., she just reacted and did not report the same. But C.H. reporting what had occurred, which in turn led to the investigation involving the incident with R.B., the incidents would not have come to light.

For all of the foregoing reasons, I **CONCLUDE** that appellant's conduct violated SCCF Rules 3:5.7 and 3:8.4.

Rule 3:1.1 (Standards of Conduct), states in pertinent part: "Employees shall conduct their private and professional lives in a manner as to avoid bringing the agency into disrepute."

Appellant, as a corrections officer, is held to a higher standard of conduct. The public respects officers for discovering, reporting, and championing the truth in circumstances of wrongdoing and while they are satisfying their duties. Appellant's unjustified use of force against two separate inmates and her intentional failure to report the same were violative of her obligations in a position of public trust. Equally as troubling is her continued belief that her conduct was both warranted and appropriate under the circumstances and her admission that she has in the past pushed or shoved other inmates and failed to report the same. No circumstance existed to warrant or justify appellant's use of force against either R.B. or C.H.

For the foregoing reasons, I **CONCLUDE** that appellant's conduct violated Rule 3:1.1 of the SCCF Rules and Regulations.

Rule 3:2.20 (Use of Force), states in pertinent part: "Sworn members shall follow agency policy and procedure on the use of force."

Under the SCCF Use of Force Policy, it states that “It is the expressed policy of this Department that only the MINIMUM amount of force necessary to suppress a disturbance, or to achieve control of a situation will be authorized. In no case shall force be considered justifiable as punishment or discipline...” (P-22.)

Section B (Definitions) of the policy provides the following definitions for Physical Contact, Non-Deadly Force – specifically “physical force”, reasonable force, and “unnecessary force” are provided and defined as:

Physical Contact. The routine or procedural contact with an individual that is necessary to effectively accomplish a legitimate law enforcement objective. Examples of physical contact include, but are not limited to, holding the arm of an individual during escort, handcuffing an individual, maneuvering or securing an individual for a search and guiding the individual into a vehicle.

Non-Deadly Force –

Physical Force – which means contact with an individual beyond that which is generally utilized to affect a law enforcement objective. Physical force is employed when necessary to overcome an individual’s physical resistance to the exertion of the authority of the custody staff member, or to protect persons or property. Examples of physical force include, but are not limited to, wrestling a resisting individual to the ground; using wrist locks or arm locks, striking with the hands or feet, or other similar methods of hand-to-hand confrontation.

Reasonable Force – that amount of force, which is necessary to overcome resistance by an individual, and accomplish one’s objective. Reasonable Force is determined by the facts and circumstances which are particular to individual cases, such as: 1) severity of the situation; 2) possibility that an individual poses an immediate threat to the safety of the officer or others; 3) whether the individual was actively resisting control or attempting to evade control by escape.

Unnecessary Force – Force that is used against a subject under circumstances where no use of force is justified.

The policy goes on to state under Section C (Directives), Subsection 6:

In any case where Correctional Personnel are required to use force to control inmates, the minimum force possible under the circumstances shall be utilized, in accordance with established procedures. Use of force shall be used only under the following circumstances:

These are:

- a. To defend one's self or others against physical assault, serious bodily harm or death;
- b. To prevent serious damage to property;
- c. To prevent escape;
- d. To prevent or quell a riot or disturbance;
- e. To prevent a suicide or attempted suicide; and
- f. To enforce facility regulations or in a situation where a ranking supervisor believes that the inmate's failure to comply constitutes an immediate threat to the safety and/or security of the facility.

In all instances when physical, mechanical, or deadly force is used, whether on or off duty, each employee who has employed such force shall complete and submit a SCCF Use of Force Report. (P-22.)

Appellant's use of force against R.B. and C.H. was not in self-defense, to prevent serious damage to property, or prevent either inmate from escaping. Nor were appellant's actions done to prevent or quell a riot or disturbance. It is unclear what Holder's goal was with regard to R.B. other than to forcefully propel her into her cell because she was moving too slowly. In C.H.'s case, it appears that her goal was to make C.H. comply with her command to sit on her bed and to discipline her for kicking the door a second time.

Even assuming arguendo that Holder was justified in her actions against C.H. to "quell a disturbance", then she should have filed a use of force report as required by the SCCF Rules and Regulations. She did not which is in direct violation of the policy.

For all of the foregoing reasons and reasons previously cited above, I **CONCLUDE** that appellant's conduct violated Rule 3:2.20 for the SCCF Rules and Regulations, Rule 3:1.11 (Obedience to Laws and Regulations) for failing to observe all of the rules and regulations of the SCCF, Rule 3:1.5(3) (General Responsibilities) as well as Rule 3:1.29 (Withholding Information).

Rule 3:1.33 (Civil Rights), states in pertinent part: "All employees shall observe and respect the civil rights of all persons. Religious prophesizing of any employee or inmate is prohibited."

Civil rights guarantee equal social opportunities and equal protection regardless of race, religion, or other personal characteristics. Both R.B. and C.H. were on the Initial Intake Unit which typically houses individuals who are detoxing and on protocol/observation status for substance abuse and other medical conditions. Holder was tasked with providing both inmates an additional level of care which she failed to do. This was particularly evident in C.H.'s case where the force and physical location of Holder's blow to C.H. could have caused significant medical repercussions.

Therefore, I **CONCLUDE** that appellant's behavior violated Rule 3:1.33 of the SCCF rules and regulations.

Rule 3:2.1 (Prohibited Activity on Duty), states in pertinent part: "Employees are prohibited from engaging in the following activities while on duty unless an exception is noted...(13) Verbal, physical, and/or mental abuse of an inmate, employee or civilian. Threatening; coercing; intimidating; harassing; or interfering with inmates, employees or civilians on county property. Inappropriate physical contact or mistreatment of an inmate, employee or civilian."

It is undisputed that appellant utilized unnecessary and excessive force against both R.B. and C.H. as set forth more fully above. Additionally, her actions and body language, particularly as it relates to C.H. after she had shoved her and approached her in the cell causing C.H. to sit back down onto her bed, appeared both threatening and intimidating.

For the foregoing reasons, I **CONCLUDE** that appellant's conduct violated Rule 3:2.1 of the SCCF Rules and Regulations.

The next question is the appropriate level of that discipline. A system of progressive discipline has evolved in New Jersey to serve the goals of providing employees with job security and protecting them from arbitrary employment decisions. Progressive discipline is considered to be an appropriate analysis for determining the reasonableness of the penalty. West New York v. Bock, 38 N.J. 500 (1962). The concept of progressive discipline is related to an employee's past record. The use of progressive discipline benefits employees and is strongly encouraged. The core of this concept is the nature, number and proximity of prior disciplinary infractions should be addressed by progressively increasing penalties. It underscores the philosophy that an appointing authority has a responsibility to encourage the development of employee potential.

The law is also clear that a single incident can be egregious enough to warrant removal without reliance on progressive-discipline policies. See In re Herrmann, 192 N.J. 19, 33 (2007) (Division of Youth and Family Services worker snapped lighter in front of five-year-old), in which the Court stated:

[J]udicial decisions have recognized that progressive discipline is not a necessary consideration when reviewing an agency head's choice of penalty when the misconduct is severe, when it is unbecoming to the employee's position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest.

Thus, progressive discipline has been bypassed when an employee engages in severe misconduct, especially when the employee's position involves public safety and the misconduct causes risk of harm to persons or property. See, e.g., Henry v. Rahway State Prison, 81 N.J. 571, 580 (1980).

In addition to considering an employee's prior disciplinary history when imposing a penalty under the Act, other appropriate factors to consider include the nature of the misconduct, the nature of the employee's job, and the impact of the misconduct on the public interest. Ibid. Depending on the conduct complained of and the employee's disciplinary history, major discipline may be imposed. Bock, 38 N.J. at 522–24. Major

discipline may include removal, disciplinary demotion, or a suspension or fine no greater than six months. N.J.S.A. 11A:2-6(a), -20; N.J.A.C. 4A:2-2.2, -2.4.

Respondent argues that appellant violated, among other things, the Divisions' policies and procedures when she failed to call a code, failed to report her use of force on two separate inmates on two separate occasions, concealed both incidents from the chain of command and was negligent in not having the inmates medically evaluated after she utilized inappropriate and unauthorized force against them in violation of the Use of Force Policy. Given the appellants disciplinary history - which has been progressive over the past four years and included discipline for falsification and failure to report, the appellant has credibility issues and is a liability to the county. In today's climate, where law enforcement needs to be transparent and effectuate proper monitoring of use of force by the law enforcement community, there is no choice but to terminate the appellant.

The appellant argues, among other things, that not only has the respondent failed to meet its burden of proof in this matter, but that the disciplinary penalty sought by the respondent, is discriminatory, racially motivated, and excessive.

In support of her position, appellant points to the FNDA's of several other SCCF officers who had also been charged with use of force in other matters, however, had received significantly less harsh penalties. It is her position that the disciplinary action sought in her case (i.e. removal), was racially motivated as evidenced by all of the cases she cited wherein the officers were male and Caucasian.

The appellant relies upon DiBuenaventura v. Washington Twp., 462 N.J. Super. 260 (App. Div. 2020), in furtherance of her contention that there was a pattern of Caucasian officers, employed by the SCCF, who were treated differently than similarly situated African-American officers, and that her conduct pales in comparison to what the other officers had done. Thus, the penalty that is sought is not only disparate, it shocks one's sense of fairness.

Appellant's argument lacks merit for several reasons and overlooks the fact each case that was cited, while the same charge on paper, i.e. violation of use of force or

truthfulness, were not only factually dissimilar, but they were not representative of all of the disciplinary actions that occurred at the facility – thereby failing to establish a pattern of discrimination. While the appellant may assert that racial discrimination was the motivation behind the penalty imposed, no credible evidence was provided to support such claim.

In review of DiBuonaventura, the case involved a police officer in Washington Township, who was charged with false reporting. Specifically, in 2012, DiBuonaventura, a police officer in Washington Township, pulled the Township's former mayor over on a traffic stop and charged him with driving while under the influence and refusing to take a breathalyzer test. The former mayor, vehemently disputed the charges and among other things, filed an IA complaint against DiBuonaventura. The internal investigation that ensued resulted in disciplinary charges levied against him for false statements concerning his prior encounters with the former mayor. He was also charged with false reporting of issuing numerous warnings during motor vehicle stops. At the hearing, all of the charges were sustained, and he was terminated for misconduct - specifically for false statements and reporting.

DiBuonaventura appealed his dismissal to the Law Division, Superior Court, who upheld his dismissal. On appeal, the Appellate Division upheld the Law Division's determination.

DiBuonaventura subsequently filed a lawsuit in the Superior Court against the Township, the Township's business administrator, and the police chief, alleging, among other things, that they fired him in violation of his equal protection rights under the New Jersey Constitution and the New Jersey Conscientious Employee Protection Act (CEPA). The suit was dismissed with prejudice on summary judgement which he appealed.

On appeal, the Court, in discussing DiBuonaventura's class-of-one, equal protection claim, the basis of which was the assertion that he was disparately treated from other similarly situated officers, stated:

Moreover, the complaint that plaintiff seeks to redress — alleged unequal treatment — is better addressed as a question of progressive discipline in the employee grievance proceedings. In other words, if, as here, a public employee has engaged in misconduct, it is not a defense to claim other employees also engaged in misconduct. Instead, the only relevant issue is whether the employee should be subject to similar or different discipline for the misconduct.

Though we need not reach the merits of plaintiff's class-of-one argument, plaintiff's allegations of disparate treatment illustrate why the remedy is a "poor fit." Engquist, 553 U.S. at 605, 128 S. Ct. 2146. Persons are similarly situated under the Equal Protection Clause when they are alike in "all relevant aspects." Radiation Data, 456 N.J. Super. at 562, 196 A.3d 579 (citations omitted). Here, plaintiff contends that he was treated differently from two police detectives when he was charged with misconduct related to the Moriarty stop and arrest. At his disciplinary hearing, plaintiff also argued that he was treated differently from another officer who issued fictitious warnings and received only a one-day suspension. In fact, plaintiff was treated differently because his conduct was different both in kind and degree from the conduct of the two detectives and the other police officer.

DiBuonaventura, 462 N.J. at 270.

Similar to the findings in DiBuonaventura, the disciplinary action levied against the appellant is different than the other matters cited by the appellant in both kind and degree.

With the above in mind and in review of Holder's disciplinary history, it appears that at the time the PNDA and FNDA were issued, the appellant was participating in the Early Warning Intervention Program. She was entered into the program as a result of patterns of poor work performance, which up until then, involved issues of time and attendance and truthfulness. The program called for a review of her performance after thirty, sixty and ninety days. In looking at the records provided, on the last two assessment dates in April 2020, and July 2020, no comments were entered. It is unclear whether the Intervention Program ended after ninety days as it was not specified. By logic however, it stands to reason that the program was not in perpetuity and must have had an end date.

Appellant's prior disciplinary history includes four written warnings – one for unauthorized absence, one for reporting for duty after the assigned reporting time and two for performance of duty. She also received three minor disciplines. All three were for violation of duty and truthfulness for which she received a two-day suspension, a three-day suspension and a four-day suspension, respectively.

Appellant was also charged with two major disciplinary actions. The first one dated October 31, 2019, charged appellant with incompetency, chronic/excessive absenteeism, neglect of duty and other sufficient cause. The disciplinary action imposed was a six-day suspension. The second major discipline charged the appellant with incompetency, inefficiency or failure to perform duties, neglect of duty and other sufficient cause. The disciplinary action imposed was a ten-day suspension.

In looking at the mitigating circumstances, there is no question that while the appellant has a prior disciplinary history, for the most part, it related to time and attendance issues, truthfulness and performance of duty.

Appellant has never received prior discipline related to physical contact with inmates or use of force.

Appellant has steadfastly denied the allegations that she used physical force against R.B. and C.H. It has been her position that she used physical contact and therefore, was not required to contact her supervisor, file a report, file a use of force report or contact the medical unit for either incident. Appellant justified her actions against R.B. by stating that R.B. was providing a low level of resistance and unstable on her feet and that she was providing guidance to R.B. to get her into her back into cell. However, as clearly seen on the CCTV coverage, R.B. was walking into her cell, on her own two feet without guidance, when R.B. shoved forcefully shoved her from behind.

With regard to C.H., once again, Holder maintained that she used physical contact only. C.H. was being disruptive and her goal was to make C.H. sit on her bunk, a command which C.H. repeatedly refused to obey. The problem with this position is that if C.H. was being disruptive, then a code should have been called. If she felt that the level

of disruption did not rise to a level of a code, then she should have just walked away and gone to see if relocation was possible. Instead, by her own statement, appellant just reacted when she raced in and forcefully shoved C.H. by the neck onto the bed.

At no time was her conduct in self-defense, to prevent serious damage to property, or prevent either inmate from escaping. Nor were appellant's actions done to prevent or quell a riot or disturbance.

Respondent argues that appellant inappropriately used excessive force on two separate occasions on two separate inmates and then intentionally failed to report it in an effort to cover it up.

One event of severe misconduct which is unbecoming in the employee's position may render an employee unsuitable for continuation in that position. Unfortunately, appellant's conduct consists of two events, against two separate inmates which were compounded by her failure to follow proper policy and procedure in reporting. It appears that her frustration at how slow R.B. was moving and her anger and/or frustration at C.H. for her outburst, got the better of her and she reacted improperly in both instances. The problem with this last statement is that, by her own testimony, she has in the past used this level of force against other inmates – claiming that it was acceptable when she worked in the GCCF. Such a defense may have worked if she had just started with the facility six months prior, but not over six years later. No competent evidence was presented to support this level of force used against either inmate. The action by the appellant in forcefully shoving both inmates - one in the back and the other by her neck, was in direct violation of the SCCF Use of Force Policy. Appellant knew that it was her responsibility to exhaust all other reasonable means before resorting to use of force and that no force is considered justifiable as punishment or discipline. (P-22, R-26.) It was appellants responsibility to keep both inmates safe from harm and her actions were in direct violation of that duty.

Appellant's other conduct of failing to follow department rules, regulations and policies was not inadvertent, it was intentional. In C.H.'s case, appellant failed to call a code or walk away from the cell which is what she should have done. She did not report

the two instances of use of force as required by the SCCF policies and procedures or file a use of force report. She did not call the Medical Unit which is particularly egregious in C.H.'s case given the fact that she had a pacemaker and C.H. was clearly distraught over appellants actions and how close she was shoved to her pacemaker. Appellant intentionally did not call the Medical Unit, it being her unilateral belief that C.H. was not injured therefore she chose not to do so. Appellant justified all of her actions by stating that she utilized physical contact, not physical force and that she believed that all of her actions were discretionary and appropriate. It is unclear, in both cases, but particularly with the incident involving C.H., how appellant could possibly couch her use of force as physical contact. Her actions were intentional, negligent, and in direct violation of her job responsibilities. Her conduct placed not only the public at risk, but the respondent as well.

With the above in mind, progressive discipline must be bypassed. The maximum penalty of a six-month suspension would be insufficient in light of appellant's choices and actions. Regrettably, appellant's conduct, some of which appears out of the norm for her service and demeanor, was so severe and egregious that the penalty of removal of her employment effective October 16, 2020 is justified.

Accordingly, I **CONCLUDE** that removal is the appropriate discipline for the violations of N.J.A.C. 4A:2-2.3 - General Causes – (1) Incompetency; (2) Insubordination; (6) Conduct Unbecoming a Public Employee; (7) Neglect of Duty; and (12) Other Sufficient Cause, specifically - Violation of SCCF Rules and Regulations – 3:1.7 (neglect of duty); 3:1.29 (withholding information); 3:5.7 (truthfulness); 3:8.4 (truthfulness); 3:1.1 (Standards of Conduct); 3:1.5 (general responsibilities); 3:1.11 (obedience to laws and regulations); 3:2.20 (Use of Force); 3:1.33 (Civil rights); 3:2.1 (Prohibited Activity on Duty).

I further **CONCLUDE** that with the exception of the charge of N.J.A.C. 4A:2.2.3(a)3 – Inability to Perform Duties, the disciplinary action taken by the Division be **AFFIRMED**.

ORDER

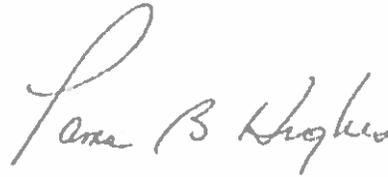
For the reasons set forth above, it is **ORDERED** that except for the charge of violation of N.J.A.C. 4A:2-2.3(a)(3) – Inability to Perform Duties, all other charges entered on the FNDA, dated October 16, 2020, by the respondent, Salem County Correction Facility, against the appellant, Shareece Holder, are hereby **SUSTAINED**. The charge of violation of N.J.A.C. 4A:2-2.3(a)(3), is hereby **DISMISSED**.

I further **ORDER** that the action of the appointing authority removing the appellant from her position as a Corrections Officer, effective October 16, 2020, is **AFFIRMED**.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



May 4, 2021

DATE

TAMA B. HUGHES, ALJ

Date Received at Agency:

May 4, 2021

Date Mailed to Parties:

May 4, 2021 (Sent Via E-Mail)

/dm

EXHIBITS

For appellant:

- P-1 PNDA and FNDA (Also in Evidence as R13 & R-14)
- P-2 Salem County Sheriff's Office Internal Affairs Investigation Allegations and Conclusions (Also in Evidence as R-5)
- P-3 Salem County Sheriff's Office Internal Affairs Investigation Report (Also in Evidence as R-4)
- P-4 Not in Evidence
- P-5 Internal Affairs Complaint Notification/Suspension
- P-6 SCCF Rules and Regulations (Also in Evidence as R-12)
- P-7 Officer Hoglen's Operation's/Incident report (Also in Evidence as R-1)
- P-8 Sergeant DeNault Operations/Incident Report (Also in Evidence as R-2)
- P-9 Lieutenant Jefferson's Operation/Incident Report (Also in evidence as R-3)
- P-10 Taped Statement of C.H. (Also in Evidence as R-9)
- P-11 Taped State of R.B. (Also in Evidence as R-8)
- P-12 Sick Call Encounter (C.H.) (Also in Evidence as R-7)
- P-13 Sick Call Encounter (R.B.) (Also in Evidence as R-6)
- P-14 Taped Statement of Corrections Officer Hoglen (Also in Evidence as R-1)
- P-15 October 6, 2020 Letter from the Salem County Prosecutor's Office to SCCF
- P-16 Taped Statement of Shereece Holder (Also in Evidence as R-11)
- P-17 Not in Evidence
- P-18* Internal affairs Findings and Conclusions and FNDA – E.G.
- P-19* PNDA – J.L.
- P-20* FNDA – K.M.
- P-21* Notice of Minor Disciplinary Action – J.L.
- P-22 SCCF Use of Force Policy

*Entered into evidence over the objection of respondent's counsel

For respondent:

- R-1 Corrections Officer Alexis Hoglen Operations/Incident Report (Also in Evidence as P-7)
- R-2 Sgt. De Vault Operations/Incident (Also in Evidence as P-8)
- R-3 Lieutenant Jefferson's Operation/Incident Report (Also in evidence as P-9)
- R-4 Internal Investigation Report (Also in Evidence as P-3)
- R-5 Internal Investigation Allegations & Conclusions (Also in Evidence as P-2)
- R-6 R.B. – Sick Report (Also in Evidence as P-13)
- R-7 C.H. – Sick Report (Also in Evidence as P-12)
- R-8 Taped Statement of R.B. (Also in Evidence as P-11)
- R-9 Taped Statement of C.H. (Also in Evidence as P-10)
- R-10 Taped Statement of Corrections Officer Hoglen (Also in Evidence as P-14)
- R-12 SCCF Rules and Regulations (Also in Evidence as P-6)
- R-13 PNDA (Also in Evidence as P-1)
- R-14 FNDA (Also in Evidence as P-1)
- R-15 Not in evidence
- R-16 Written Reprimand – July 23, 2018
- R-17 Notice of Minor Discipline
- R-18 Notice of Minor Discipline
- R-19 Not in Evidence
- R-20 Notice of Mino Disciplinary Action
- R-21 Not in Evidence
- R-22 PNDA – October 23, 2019
- R-23 PNDA – December 17, 2019
- R-25 Video
- R-26 Use of Force Test
- R-27 Not in Evidence